IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2487 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE K.A.PUJ

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SATADHAR ENTERPRISES & 1 - Petitioner(s)
Versus
COMMISSIONER OF INCOME-TAX & 3 - Respondent(s)

==========

Appearance :
MR S.N.L. AGARWALA for Petitioner(s) : 1 - 2.
MR MANISH R BHATT for Respondent(s) : 1 - 4.

==========

CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 20/03/2006

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE K.A.PUJ)

RULE. Mr. M.R. Bhatt, learned Sr. Standing Counsel, appearing for the respondents, waives service of rule.

2. The petitioners have filed this petition under Art. 226 of the Constitution of India making substantially three prayers:

2.1 Firstly, the petitioners have prayed for quashing and setting aside the attachment order dated 17.1.2005, which was modified subsequently on 6.1.2006 and again on 12.1.2006. The petitioners have also prayed for a direction to respondent No. 1 i.e. the Commissioner of Income-tax to take appropriate steps to ensure early hearing of the first appeal filed by the petitioner No. 1 which is pending before the Commissioner of Income-tax (Appeals)-III, Surat, and have also prayed for a direction to the Income Tax Appellate Tribunal, Ahmedabad, for early hearing and disposal of the appeal filed by the petitioner No. 2 and pending before it.

2.2 Lastly, the petitioners have prayed for stay against the demand which was raised against the petitioners till the appeals are decided by the appellate authorities.

3. Heard Mr. S.N.L. Agarwala, learned counsel appearing for the petitioners and Mr. M.R. Bhatt, the learned Sr. Standing Counsel appearing for the respondents.

4. It is the case of the petitioners that the petitioner No.2, namely, Damjibhai Khurjibhai Yadav, contributed the land belonging to him on 23.11.2001 to the petitioner no. 1 firm i.e. M/s. Satadhar Enterprises as capital contribution and capital loss on sale of land suffered by the petitioner No. 1 firm to petitioner No. 1 was offered in the return of income for AY 2002-2003. The said land was also shown in the return of income of M/s. Satadhar Enterprises for the AY 2002-2003. The Assessing Officer accepted the transfer for the AY 2002-2003 in both the cases. Subsequently, search and seizure proceedings were initiated under sec. 132 of the

Income-tax Act, 1961 (hereinafter referred to as '**the Act**') on 17.7.2002. Block assessment was completed in the case of the petitioner no.2 making protective addition of Rs. 87.50 lakhs as undisclosed investment in the land at Chanod, on 31.8.2004. Subsequently, notice of demand was also issued on the basis of the protective addition by the Assessing Officer in the case of the petitioner No. 2. Being aggrieved by the said order, the petitioner No.2 has filed the first appeal before the CIT (Appeals)-II, Surat, on 29.9.2004. During the pendency of the said appeal, notice for coercive recovery of the demand was issued on 11.10.2004 and immediately thereafter the attachment order was passed on 17.1.2005 by the Tax Recovery Officer attaching, in all, 7 properties which, inter alia, includes the property being land at Survey No. 276 paiki, Nr. Cine Park Multiplex, Vapi-Silvassa Main Road, Chanod, Dist. Valsad.

5. The appeal filed by the petitioner No.2 before the CIT (A)-II, Surat, was decided on 22.3.2005 and he has deleted the addition of Rs. 87.50 lakhs made on protective basis in the hands of the petitioners

No. 2. The petitioner No. 2 has paid off the revised demand on 18.3.2005.

6. A regular assessment order was passed by the Assessing Officer for AY 2002-2003 in the case of the petitioner No.1, whereby the demand of Rs. 45,42,996/- was raised on 31.3.2005. Being aggrieved by the said order, the petitioner No. 1 has filed the first appeal before the Commissioner of Income-tax(A)-II, Ahmedabad, on 26.4.2005, which is still pending. Even the petitioner No. 2 has also filed a second appeal before the Income Tax Appellate Tribunal, Ahmedabad, on 26.4.2005 against various additions confirmed by the learned CIT (Appeals). Over and above this, substantive addition of Rs. 87,75,000/- was made in the hands of Shri Kamlesh D. Yadav, son of petitioner No. 2, which was confirmed by the learned CIT(A)-II, Surat, and appeal thereagainst is pending before the Tribunal.

7. Subsequently, the Tax Recovery Officer, by his order dated 6.1.2006, has modified the order of attachment, and out of 7 properties, he has released

four properties. The attachment on Chanod property still continued. The petitioners' representations for release of the attachment on Chanod property from time to time was not found favour with the respondent authorities. The Tax Recovery Officer, vide his letter dated 12.1.2006, informed the petitioner No. 1 that since he has failed to pay the sum of Rs. 40,40,990/- in respect of Certificate No. Nil dated 9.12.2004 drawn up by him and the interest payable u/s 220(2) of the Income-tax Act, the attachment on Chanod property remained in existence. The petitioner No. 1 has constructed flats on the said land and the same were sold to the members from whom sale consideration was also received. They were to be given possession of flats. However, because of the attachment the possession could not be given by the petitioner No. 1 to those purchasers. In view of the above facts, Mr. Agarwala, learned counsel appearing for the petitioners, has submitted that though the petitioners' appeals are pending before the appellate authorities and other properties which have been attached by the respondent authorities are adequate enough to safeguard the interest of the revenue, the

respondent authorities should be directed to lift or release the attachment on Chanod property.

8. Mr. M.R. Bhatt, learned Sr. Standing Counsel, appearing for the respondent authorities has submitted that the petitioners have got an alternative remedy to file an appeal against the order of attachment and hence the petition should not be entertained by this court. He has further submitted that though there was no demand at present against the petitioner No. 2, the provisions of sec. 225(2) of the Act are still applicable. He has further submitted that as per the Rule 48 of the Second Schedule of the Act, the Tax Recovery Officer is empowered to attach any immovable property of the defaulter. The combined reading of Rule 4, 10 and 11 makes it clear that properties held in the name of the defaulter or held by another person in trust for the defaulter or held 'benami' by third party are liable for attachment for sale. He has further submitted that the values of the properties offered by the petitioners appear to be exaggerated and are not easily salable. The Chanod land is kept in

attachment considering easy saleability as compared to other properties. The ownership of the said land has still not become final and disputed demand is pending in the case of petitioners as well as Shri Kamlesh D. Yadav. Lastly, he has submitted that over and above the outstanding demand of Rs. 40,42,990/- in the case of the petitioners, the demand of Rs. 1,52,43,436/- is still outstanding in the case of Shri Kamlesh D. Yadav. He has, therefore, submitted that this court should not interfere in the order of attachment passed by the Tax Recovery Officer.

9. After hearing the learned counsel appearing for the petitioners and the learned Sr. Standing Counsel appearing for the respondents and after going through the petition as well as the documents attached therewith and the affidavit-in-reply and further affidavit filed on behalf of the petitioners, we are of the view that relief prayed for in the present petition is only in respect of the release of attachment on Chanod property and early hearing of appeals. By virtue of an additional affidavit filed on behalf of the petitioners, it has come on record

that the petitioners have shown their willingness to offer other properties for attachment, some of which were released earlier. The value of all these properties comes to about Rs. 4 crores, whereas the demand raised against the petitioners is to the tune of about Rs. 45 lakhs. Even if the demand raised against Shri Kamlesh D. Yadav is considered, it comes to Rs. 1.95 crores. Moreover, the appeals are pending before the appellate authorities. The court has not gone into the merits of the various contentions raised by the parties. Even if the entire issue is looked into from equitable point of view, the interest of justice would be served if the attachment on the Chanod property is ordered to be released and as against this, other properties which are offered for attachment by the petitioner No. 2 and Shri Kamlesh D. Yadav in their affidavit dated 16.3.2006, wherein detailed descriptions of those properties are given, are directed to be attached, the revenue's interest can be fully safeguarded. The petitioner No. 2 has filed the affidavit, wherein these properties are mentioned and total value of these properties come to about Rs. 4 crores. In the

affidavit filed by Mr. Kamlesh D. Yadav, 2 properties are mentioned and the value of these two properties comes to about Rs. 10,50,000/-. Both, the petitioner No. 2 as well as Mr. Kamlesh D. Yadav have categorically stated in their affidavits that they have no objection if those properties are taken in attachment in lieu of cancellation of attachment in respect of land bearing Survey No. 276 paiki located at Chanod, Vapi. They have also undertaken before this court that they would not transfer the said properties in any way until the question of payment of demand in respect of block assessments in their cases for which appeals are pending, is finally resolved. The view we are taking is supported by the decision of this court in the case of **Ahmedabad South Indian Association Charitable Trust v. Dy. Commissioner of Income-tax,** (2001) 117 Taxman 413 (Guj.).

10. In the above view of the matter, we hereby direct the respondent authorities to release the attachment on the property being land bearing Survey No. 276 paiki located at Chanod, Vapi, on or before

31.3.2006 and pass appropriate order for attachment, if not under attachment, with regard to the properties mentioned in the two affidavits dated 16.3.2006 filed by the petitioner No. 2 as well as Shri Kamlesh D. Yadav. Though, on the face of it, it appears to the court that the values of these properties are adequate enough to safeguard the interest of the revenue against the demand raised against the petitioners as well as Shri Kamlesh D. Yadav, it is, however, made clear that if, as a result of the decisions of the appellate authorities, any demand remains outstanding which cannot be recovered from the properties which are directed to be attached by this order, and if there is any shortfall, in that case, the petitioners as well as Shri Kamlesh D. Yadav will be liable to make payment of demand so determined in their cases.

11. Since the appeals are pending before the appellate authorities, we are of the view that the entire controversy can be sorted out or at least minimised if those appeals are decided on a priority basis. We, therefore, direct the appellate

authorities, namely, the Commissioner of Income-tax (A)-III, Surat, or any concerned CIT(A), as well as the Income Tax Appellate Tribunal, Ahmedabad, to dispose of the appeals which are pending before them as expeditiously as possible, preferably within the period of 3 months from the date of receipt of the writ from this court or from the date of receipt of the certified copy of this order, whichever is earlier. The petitioners shall move to the concerned authorities alongwith copy of this order forthwith. Till those appeals are decided, and since the attachment orders are directed to be issued in respect of other properties, the demand raised against the petitioners may not be enforced by resorting to any coercive measures.

12. In view of the above direction and since no other reliefs are pressed for in this petition, the petition is accordingly disposed of. Rule is made absolute to the above extent without any order as to costs.

Direct service is permitted.

(hn) (Anil R. Dave, J.)

(K.A. Puj, J.)